

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 RANDOLPH DAY,

5 Plaintiff,

6 v.

7 LONGVUE MORTGAGE CAPITAL, INC.,
8 as trustee for WESTVUE NPL TRUST II;
9 FIRST AMERICAN SOLUTIONS, LLC; and
DOES I-X and ROES CORPORATIONS I-X,
inclusive,

10 Defendants.

Case No. 2:17-cv-01596-JAD-EJY

ORDER

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12 Presently before the Court is Defendant's Motion to Substitute Party (ECF No. 53) or, in the
13 alternative, Motion to Intervene (ECF No. 54), filed on June 14, 2019. Plaintiff filed its Opposition
14 (ECF No. 56) on June 28, 2019, and Defendant filed its Reply (ECF No. 57) on July 3, 2019.

15 **I. PROCEDURAL BACKGROUND**

16 This matter arises from claims alleging statutorily defective foreclosure, slander of title, lack
17 of standing to foreclose/wrongful foreclosure, violations of the Fair Debt Collections Practices Act,
18 deceptive trade practices, civil RICO, mortgage lending fraud, and intentional infliction of emotional
19 distress. ECF No. 1. Defendant LongVue Mortgage Capital Inc., as trustee for WestVue NPL Trust
20 II ("WestVue"), requests that proposed Substituted Party LongVue Mortgage Capital Inc., as trustee
21 for WVUE 2015-1 ("WVUE"), be substituted in this action as the Defendant in its place and stead
22 pursuant to Rule 25 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). ECF No. 53.
23 Defendant represents that WVUE is the successor-in-interest to WestVue and is the current
24 beneficiary of record of the deed of trust. *Id.* at 1:25–26. Defendant argues that WVUE is, therefore,
25 the proper real party in interest. *Id.* at 1:26-27. Defendant represents that the deed of trust was
26 assigned to WVUE on May 20, 2019. *Id.* at 4:9–11. Plaintiff Randolph Day argues that Defendant's
27 request is unwarranted because the interest LongVue Mortgage, Capital Inc. purports to hold was
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1 transferred before this action commenced. ECF No. 56 at 5:18–6:24. Defendant counterargues that
2 its Motion would not change the obligation of any party to this litigation, other than the name of the
3 Defendant. ECF No. 57 at 2:5–6.

4 In the event that the Court does not believe substitution is appropriate, WVUE requests that
5 it be permitted to intervene in the action and dismiss WestVue. ECF No. 53 at 5:15–6:14. Plaintiff
6 argues that permissive intervention is similarly improper because WVUE has no interest or role in
7 this action, and allowing WVUE to intervene at this stage of the proceedings would prejudice
8 Plaintiff by complicating matters, causing delay, and increasing expense. ECF No. 57 at 7:1–6:11.

9 The Court will discuss each of the Defendant’s Motions below.

10 **II. DEFENDANT’S MOTION TO SUBSTITUTE PARTY**

11 Fed. R. Civ. P. 25 governs the substitution of parties. Rule 25(c) states that if an interest is
12 transferred, “the action may be continued by or against the original party unless the court, on motion,
13 orders the transferee to be substituted in the action or joined with the original party.” Rule 25(c) is
14 designed to allow an action to continue unphased when an interest in the lawsuit changes hands. *In*
15 *re Bernal*, 207 F.3d 595, 598 (9th Cir. 2000) (internal citation omitted). Specifically, Rule 25(c)
16 “does not require that anything be done after an interest has been transferred. The action may be
17 continued by or against the original party, and the judgment will be binding on his successor in
18 interest even though he is not named.” *Id.* (internal citations omitted). The decision to substitute
19 parties under Rule 25(c) is within the court’s discretion. *United States for Use of Acme Granite &*
20 *Tile Co. v. F. D. Rich Co.*, 437 F.2d 549, 552 (9th Cir. 1970); *McComb v. Row River Lumber Co.*,
21 177 F.2d 129, 130 (9th Cir. 1949).

22 Defendant alleges (albeit incorrectly) that WVUE was assigned the interest to the disputed
23 deed of trust on May 20, 2019. ECF No. 53 at 4 ¶ 8. As the purported holder of the deed of trust,
24 Defendant asserts that “WVUE has a direct and substantial interest in the case due to the Complaint
25 seeking a judicial determination as to the validity of the Note and right of the Note Holder to
26 foreclose.” *Id.* at 5:7–9 (internal footnotes omitted). Accordingly, Defendant moves this Court to
27 substitute WVUE into this action as the Defendant in place of WestVue. *Id.* at 1:20–28.

1 The facts militate against the Court’s discretionary substitution of WVUE for WestVue in
2 the present action. Most significantly, irrespective of the statement by Defendant regarding the
3 disputed deed of trust assignment date, it appears that “[d]espite three foreclosures (including
4 mediations) and two years of litigation before this Court, Defendant only very recently revealed that
5 WestVue NPL . . . assigned the Day Loan to WVUE 2015-1 in *December 2015*.” ECF No. 56 at
6 4:7–10. As Plaintiff points out, “[Defendant’s] Motion’s factual timeline . . . fail[s] to mention either
7 the three relevant foreclosures or the fact WestVue NPL assigned away those same rights to WVUE
8 2015-1 on December 11, 2015.” *Id.* at 6:8–11. Only a close reading of Defendant’s fifth exhibit
9 attached to its underlying Motions (ECF No. 53-5; ECF No. 53-5) reveals that the WestVue
10 assignment of the disputed deed of trust actually occurred on December 11, 2015, and not on May
11 20, 2019. *Id.* at 4:24–5:1. Finally, citations to deposition testimony taken of Defendant’s Fed. R.
12 Civ. P. 30(b)(6) witness in Plaintiff’s Motion for Partial Summary Judgment (ECF No. 55) seem to
13 confirm that Defendant knew WestVue was not the holder of the Day Loan after the December 2015
14 assignment. *Id.* at 6:15–17. These discrepancies rightfully trouble the Plaintiff, and undermine
15 Defendant’s request for substitution.

16 Defendant claims that WVUE “will assume all of the rights and liabilities held by WestVue
17 as Rule 25 is merely procedural, not dispositive of the claims. As such, there is no prejudice to
18 Plaintiff as he loses none of his allegations or claims as a result of the substitution.” ECF No. 53 at
19 5:11–14. It is true that a substituted defendant “must . . . stand in [the original defendant’s] shoes
20 with respect to all phases of litigation.” *In re Bernal*, 207 F.3d at 598. Notwithstanding, Defendant’s
21 unwarranted delay in reporting WestVue’s transfer of assignment of the deed of trust cuts against
22 substituting WVUE for WestVue under Rule 25(c). The Court, in an exercise of discretion, denies
23 Defendant’s Motion to Substitute Party (ECF No. 53).

24 **III. DEFENDANT’S MOTION TO INTERVENE**

25 Fed. R. Civ. P. 24(b) governs permissive intervention. “[A] court may grant permissive
26 intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2)
27 the motion is timely; and (3) the applicant’s claim or defense, and the main action, have a question
28 of law or a question of fact in common.” *League of United Latin Am. Citizens v. Wilson*, 131 F.3d

1 1297, 1308 (9th Cir. 1997) (internal citation omitted); Fed. R. Civ. P. 24(b). “A finding of
2 untimeliness defeats a motion for permissive intervention.” *United States v. State of Wash.*, 86 F.3d
3 1499, 1507 (9th Cir. 1996). In assessing timeliness under Rule 24(b)(2), the court considers “(1) the
4 stage of the proceeding; (2) the prejudice to existing parties; and (3) the reason for and length of the
5 delay.” *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (internal citations omitted).

6 Defendant requests that WVUE be permitted to intervene in the action and dismiss WestVue,
7 given that the Court does not find substitution of the Defendant appropriate. ECF No. 53 at 5:16–
8 17. Defendant claims that “permissive intervention necessitates WVUE [sic] intervention because
9 its claim to the Note and Deed of Trust are at issue in the present litigation.” *Id.* at 6:12–14.
10 “WVUE’s chief concern is that if it is not added a party, and it attempts to proceed with foreclosure
11 at some point in the future, WVUE will have to defend another fraudulent note lawsuit.” ECF No.
12 57 at 3:21–23.

13 The facts militate against the permissive intervention of WVUE and dismissal of WestVue
14 in the present action. First, Defendant’s Motion to Intervene is far from timely. The Court finds
15 that the intervention of WVUE “after two years of litigation and after the close of discovery, and
16 Defendant’s corresponding request for its dismissal” would unduly delay and prejudice the
17 adjudication of Plaintiff’s rights. ECF No. 56 at 8:8–9. Indeed, Defendant does not even attempt to
18 explain why it brings its Motion now, despite “possess[ing] all the documents and knowledge
19 required to intervene at the time the case first commenced.” *Id.* at 7:27–28. Further, there is no
20 reason why Defendant cannot adequately defend against Plaintiff’s claim that WestVue never
21 obtained rights in the June 2015 assignment, without having to resort to a court-sanctioned
22 intervention. *Id.* at 7:23–24. Finally, Defendant fails to explain in its instant Motions (ECF Nos.
23 53, 54) and Reply (ECF No. 56) what interests, claims, defenses, or role WVUE has in this action.
24 Therefore, the Defendant’s Motion to Intervene (ECF No. 54) is denied.

25 **IV. CONCLUSION**

26 For the foregoing reasons,

27 IT IS HEREBY ORDERED that Defendant’s Motion to Substitute Party (ECF No. 53) is
28 DENIED.

1 IT IS FURTHER ORDERED that Defendant's Motion to Intervene (ECF No. 54) is
2 DENIED.

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4 DATED THIS 18th day of September, 2019.

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7 ELAYNA J. YOUCHAH
8 UNITED STATES MAGISTRATE JUDGE
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